



The Attorney General of Texas

March 9, 1983

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Open Records Decision No. 358

Re: Ratio studies of real
property prepared by county
appraisal district; access
by legislator

Dear Mr. Hanna:

On behalf of the Jefferson County Appraisal District, you have asked whether certain sales ratio studies conducted by the Jefferson County Appraisal District are subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

The following information has been requested by a state legislator:

1. legal descriptions of all properties of the sample taken;

2. appraised values of all properties of the sample taken;

3. sales values and dates of all properties of the sample taken;

4. any and all calculations, ratios, means, medians, etc. of the sample taken;

5. any narrative report prepared to accompany the ratio study conducted by you and/or your staff;

6. any and all ancillary reports and/or data relating to the study(ies) conducted by you and/or your staff.

The information requested consists primarily of comparisons between the selling prices of parcels of certain real property and the appraised values of those properties as reported by the appraisal district appraisers. You advise that the information about the

selling prices was obtained in 1981 by the chief appraiser of the appraisal district from a private real estate service pursuant to a promise that the information would remain confidential.

You assert that the requested information is excepted from disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 22.27 of the Tax Code, a new provision, states, in pertinent part:

(a) Rendition statements and real and personal property reports filed with an appraisal office and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section. (Emphasis added).

Section 22.27 became effective on January 1, 1982. Subsection (c) thereof makes it a crime for a person who has legal access to such information to knowingly disclose it to unauthorized persons.

Although members of the legislature are granted special rights of access to a variety of records and information under subsections 3(b) and 14(c) of the Open Records Act, such special privileges do not extend to information protected from disclosure by statute or common law, i.e., to information excepted by subsection 3(a)(1) of the Open Records Act. See Attorney General Opinions H-427, H-353 (1974); Open Records Decisions 253, 237 (1980); 163 (1977); 119 (1976); 113 (1975); 62, 44 (1974). Both subsections 3(b) and 14(c) of the Open Records Act declare that nothing in that act provides authority to withhold information from a member of the legislature who seeks the information for legislative purposes. Those subsections, however, do not abrogate other laws that have a cloaking effect. When the legislative access provisions of the Open Records Act conflict with a statutory command that specific information remain confidential, legislators have no greater right of access to the information than do members of the public.

Section 22.27 renders two kinds of records unavailable to the public. First it makes all rendition statements and all real and personal property reports filed with an appraisal office confidential. Section 22.27 also prohibits disclosure to "anyone" (with specified exceptions) of confidential "information voluntarily disclosed to an appraisal office about real or personal property sale prices after a promise it will be held confidential." Individual legislators are not specified as among those authorized to receive the information.

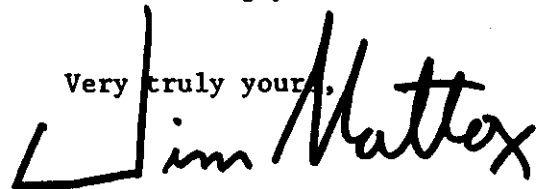
Section 22.27(a) of the Tax Code makes no distinction between promises of confidentiality given before or after its passage. It confers "confidential" status upon all such information obtained pursuant to a promise of confidentiality. In our opinion the statute applies alike to information obtained before or after its effective date.

The legislature has merely changed the status of certain described information from "open" to "closed." The Open Records Act vests no right in anyone to have previously-disclosable information remain disclosable notwithstanding an intervening determination by the legislature that it should be withheld from public inspection. Cf. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 677-78 (Tex. 1976) (previously "closed" information made "open" by legislative act not exempted from disclosure merely because at time it was given there was an expectation of confidentiality). To be vested, a right must be something more than an expectation of the continuance of an existing law. It must have become an entitlement to the present or future enjoyment of property or the enforcement of a demand, or to a legal exemption from demands. See 12 Tex. Jur. 3d Constitutional Law §§178, 179 at 780-81. The Open Records Act creates no such rights. Cf. Attorney General Opinions MW-221 (1980) (retroactive application of section 3.02(a)(18), Education Code, dealing with computation of retirement benefits, would not divest anyone of any vested rights); H-1102 (1977) (curative statutes have not been held to divest any vested rights). Compare Open Records Decision No. 55 (1974) with Open Records Decision No. 55A (1974).

We conclude that section 22.27(a) prevents release of the information sought unless its release is authorized by subsection (b) of the statute. That subsection authorizes its disclosure (1) in a judicial or administrative proceeding pursuant to subpoena, (2) to the person (or his representative) who furnished the information, (3) to certain tax officials and personnel, (4) in certain proceedings relating to property taxation, (5) for statistical purposes in a form that does not identify specific persons or specific property, and (6) in documents that the appraisal office is required by law to maintain or prepare, if the information is required to be included therein.

Other than in connection with the "statistical purposes" provision, you have not provided us sufficient information to determine whether one or more of these exceptions apply. In the absence of an applicable section 22.27 exception, that section of the Tax Code closes the information and the Open Records Act cannot be used to open it. With respect to those exhibits furnished us, however, the last line on the last page of Exhibit D, the last page of Exhibit E, and Exhibit F in its entirety show only statistical information in forms that do not identify specific properties or specific owners. Section 22.27 of the Tax Code does not make such statistical information confidential, nor does an Open Records Act exception allow it to be withheld. Accordingly, it should be released.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is stylized with a large, sweeping "J" and a cursive "Mattox".

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